

Tax regulation of the self-employed in Russian Law

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ABSTRACT: It is assumed that in the implementation of certain types of income-generating activities, citizens can be exempted from the necessity of carrying out often burdensome duties established for individual entrepreneurs. From the tax law point of view, it is possible to analyze institutional barriers to self-employed people, and identify ways to overcome.

Keywords: Tax. Economy. Self-employed. Workers. Law.

1 INTRODUCTION

Relying on the research data from the National Research University of Higher School of Economics, we conclude that in Russia, self-employment is common in such areas as agriculture, construction, transport services, trade, legal and real estate services. According to the same studies, the incomes of both formal and informal self-employed Russians are significantly higher than those of formal wage earners: incomes can differ from 25 to 50%.

The authors of the report on employment in the Russian Federation from the Center for Strategic Research believe that the reason for such a wide spread of informality among the self-employed is the presence of an institutional barrier that prevents the transfer of self-employed to a formal state. And the fact that the activities of the self-employed are often carried out in areas where there are no intermediaries or third parties in the relationships of the parties to business activity, and payment is made in cash, is critical for the state regulation of self-employment.

2 DEVELOPMENT

From the tax law point of view, it is possible to analyze institutional barriers to self-employed people, and identify ways to overcome them. According to the estimates of the Public Chamber, the problem of informality of the self-employed costs about 1.2 billion rubles a year. The federal authorities recognize the existence of a problem and the need to solve it, and the instructions of the President of the Russian Federation are evidence of this. This topic was touched upon in the Plan of regular measures to ensure sustainable development of the economy and social stability in 2015.

Because the reason for the informality of the self-employed lies in the existence of an institutional barrier, the author Lysenko proposes to designate this barrier. In his opinion, the most significant circumstance that prevents the formalization of self-employed is the legally established regime of their activities. So initially (before making changes in the legislation), the self-employed had only one option of legal implementation of his activity - registration as an individual entrepreneur. The

acquisition of the status of an individual entrepreneur, however, is associated with bureaucratic difficulties and requires a person with this status to fulfill the duties of accounting and paying taxes and fees. As a result, for “self-employed” these difficulties were not compensated by the advantages of formal status. For example, the possibility of hiring workers for the self-employed does not matter.

From this it follows that the legal regime of the individual entrepreneur does not correspond to the proper extent to the specific features of the economic activity of the self-employed: imposes on them burdensome duties and does not provide in return for proportional advantages. This naturally leads to the fact that the self-employed are mostly not ready to acquire a legal status. The situation can be changed provided that favorable conditions for carrying out activities by self-employed if they acquire a formal status. And in many respects, it is the tax law that determines the outcome of any relevant legislative initiative. “In the current situation, the development of legislation should go in the direction of lowering the costs of self-employed, connected with the acquisition and preservation of a formal status. The registration process should be simplified, the responsibility for keeping records is minimized, the tax burden is reduced”. So, Lysenko E.D. reasonably warns that the power of state coercion will not lead to the transition of self-employed to a formal status, but rather provokes an increase in unemployment and a decline in people's well-being. Federal Law No. 401 that introduced amendments to the Tax Code can improve the position of self-employed. According to these changes:

1. In the tax legislation, a new category of individuals, who do not have the status of individual entrepreneurs, but actually render services to other individuals for personal, domestic and other similar needs and who re-

ceive the corresponding income, has actually appeared (clause 7.3 of Art. 83 of the Tax Code of the Russian Federation). Such citizens do not have the right to hire hired workers, but they have the opportunity to carry out their activities officially. In this case, the registration procedure for them was substantially simplified.

Individuals classified in this category were exempted from personal income tax, subject to registration in an appropriate capacity (clause 70, Art. 217 of the Tax Code of the Russian Federation). Persons who are self-employed by the service were exempted from the obligation to pay insurance premiums from the amounts of self-employed remuneration (subpar. 3 of clause 3 of Art. 422 of the Tax Code of the Russian Federation). At the same time, the privilege itself is temporary and will last until the end of 2018 (clause 13 and clause 20 of Art. 13 of the Federal Law No. 401), which makes it possible to call it a tax holiday.

The main advantage of this solution seems to the author to be a self-employed relatively simple mechanism for legalizing his activities. In return for acquiring a legal status, self-employed people get the opportunity to not pay taxes for two years, and do not incur burdensome duties related to the acquisition of the status of an individual entrepreneur.

An essential problem of the chosen model of regulation is its incompleteness. The status of the self-employed does not provide for any specific features of taxation after the expiration of the period for which the benefit is granted. Moreover, in itself the status after 2018 has no value, since for the continuation of legal activity the self-employed will need to acquire the status of an individual entrepreneur. This circumstance substantially devalues the advantages of the status of the self-employed and reduces the stimulating effect. The probability of legalization of any noticeable percentage of self-employed is worth as-

sessing critically. Perhaps in the future, new changes will be adopted in the Tax Code, which will correct the current situation, but until then, it is not possible to call effective legislative regulation effective.

2. In the Tax Code of the Russian Federation, a short list of types of activities that can be dealt with by persons classified as self-employed has been fixed. There are only three points in it: tutoring, cleaning, supervision and care of children, patients and the elderly (clause 70 of Art. 217 of the Tax Code of the Russian Federation). At the same time, the list can be expanded by regional legislation.

According to Lysenko, the law contains too short a list of activities that clearly do not cover the most numerous categories of self-employed. The author believes that some of the shortcomings of the existing legislative regulation could be resolved at the expense of the proposals of the Public Chamber of the Russian Federation in 2016. According to this legislative initiative, the introduction of a patent system of taxation for self-employed was envisaged, consisting of more than forty lists of permitted activities, as well as a simple tax system for self-employed. Thus, according to Lysenko, this legislative initiative contributes to the creation of a stable regime for taxation of self-employed, simplification of the registration procedure, which in combination with tax holidays and low patent cost allows creating quite attractive conditions for the self-employed.

Of course, the adoption of the bill under consideration would not completely solve the problem of informality of the self-employed: the spread of informality in the economy is not an independent problem, but a characteristic feature of the imperfection of the economic system as a whole. But at the same time creating a comfortable mode of activity for self-employed people is a significant investment in the development of the economy. In a difficult economic situation, "it is the

social effect of creating comfortable conditions for self-employed people that should be recognized as the most important consequence of the reforms, and it is to achieve it that the efforts of the state should be directed".

Law scholars, exploring one of the directions of the announced "reconfiguration" of the tax system (changing the legal status of self-employed persons not registered as individual entrepreneurs by changing civil and tax laws) are not optimistic. So, the author Popkova G.G. argues that the changes in the norms of law implemented and expected in the near future will not have a significant impact on the domestic jurisprudence.

By the way, today's situation in terms of taxation of individuals in Russia is characterized by Tyunin D.V.: the domestic tax legislation is "tuned" mainly to business taxation and to the maximum possible "shutdown" of individuals from this process without the status of individual entrepreneurs (through indirect institutions taxes, tax agents, insurance contributions to employers, relatively low rates of property taxes on "non-statutory" property, etc.), including in order to minimize be discontent and disputes of citizens with the government on these issues.

An extremely important circumstance is that these individuals are practically not involved in the penalty (tax, administrative, criminal) liability for tax violations. Individuals do not often restrict land tax, transport tax, property tax and other taxes to tax notices previously sent to them by tax authorities, because non-payment in itself does not entail any penalties of a punitive nature. It is possible, of course, to enforce a tax with a small percentage (penalties) through a court, but this is an uncommon practice. For this reason, for a long time, the tax topic was by and large not of interest to voters or politicians in the Russian Federation.

In the Address of the President of the Rus-

sian Federation to the Federal Assembly of December 1, 2016, a proposal was made during the next year to thoroughly and comprehensively consider proposals for setting up a tax system with the participation of business associations. Perhaps, the President's words mean future large-scale changes in the Tax Code of the Russian Federation. Bryzgalin A. V., commented on the proposal of Putin V.V. about "restructuring" of the tax system in the near future, expressed an opinion on the need to strengthen taxation of individuals at the present time.

Of course, proposals to increase the tax burden on individuals have sounded before. Even in the Address of the President of the Russian Federation to the Federal Assembly of December 12, 2012, the Government of the Russian Federation was offered to implement the adopted principal decisions on the "luxury" tax, which indicated the necessity of introducing a tax on elite real estate, expensive cars, etc. Almost this led only to a change from January 1, 2014 the rules of calculating the transport tax (in clause 2 of Art. 362 of the Tax Code of the Russian Federation, increasing coefficients for expensive cars are introduced) and to introducing from January 1, 2015 the taxation of property of individuals at the cadastral value (clause 1, Art. 402 of the Tax Code). The need to free the self-employed from taxes for several years with a view to their legalization was at a meeting of the Council for Strategic Development and priority projects in Novo-Ogarevo.

It is noteworthy that in the draft guidelines for the tax policy for 2017-2018 in section 1, "Implementation of the President's Address to the Federal Assembly of the Russian Federation and Anti-Crisis Measures of the Government of the Russian Federation", subsection 1.1 "Stimulating the Activities of Small and Medium-Sized Enterprises" notes that in order to reduce informal employment economically active population is expected intro-

duction for individuals who provide on an individual basis for hiring some types of services to individuals (cleaning, household introduction, tutoring, examination and care of children, sick and elderly) and non-individual teachers, the possibility of voluntary notification of their performance of income from the payment of personal income tax, as well as the release of these payments to state extra-budgetary funds and from responsibility for conducting illegal business activities for the period until December 31, 2018. In order to avoid abuses, the authors of the draft Guidelines note that as a measure that excludes the risk of the transition of existing individual entrepreneurs to the proposed regime for the non-payment of taxes and insurance premiums, such preferences can only be used by those individuals who were not previously registered as individual entrepreneurs. According to Popkova Zh.G., these ideas are set out in subsection 1.1 "Stimulating the activities of small and medium-sized businesses", which causes confusion due to the fact that there is no question of any incentive, or small or medium-sized businesses. The author points out that it is rather an attempt to tax in the future (since 2019) massively hidden from the state taxes. Referring to the publications, Popkova Zh.G. believes that it is more likely that some activities will be defined as varieties of entrepreneurial activity (possibly in the form of an undeniable presumption regardless of the frequency of the activity) with the appropriate collection of taxes (insurance contributions). This is nothing more than an attempt by the legislator to simplify taxation problems.

However, from January 1, 2017, in accordance with par. 7.3 of Art. 83 of the Tax Code of the Russian Federation, registration of an individual (with the exception of persons referred to in Art. 227.1 of this Code) who is not an individual entrepreneur and who provides services to an individual for personal,

domestic and/or other purposes without employing hired workers of such needs, in this capacity is carried out by the tax authority at the place of residence (or place of stay) of this individual on the basis of the notification submitted by him to any tax authority of his choice on the implementation (termination) of activities for rendering services to an individual for personal, domestic and/or other similar needs. It is interesting that on December 28, 2016, on the official website for posting information on the preparation of draft federal legal acts and the results of their public discussion, a draft order of the Federal Tax Service of Russia "On approval of the form and format of notification of individuals on the implementation (on termination) activities to provide services to an individual for personal, domestic and/or other similar needs, as well as the procedure for completing the notification form" is posted. It is surprising that, as of the end of January 2017, this document remains only in the status of the project, as well as the fact that as of the end of January 2017 there are no opinions expressed on this website.

There are still many questions. Thus, in par. 2 of Art. 84, which corresponds with paragraph 7.3 of Art. 83 of the Tax Code of the Russian Federation, it is provided that when registering (removal from the register) individuals on the basis of clause 7.3 of Art. 83 of this Code, notice of registration (removal from the register) with the tax authority is not issued (not sent) that is, the indicated provisions in fact presuppose an initiative registration of this category of individuals. But in Art. 23 of the Tax Code of the Russian Federation "Obligations of taxpayers (payers of fees, payers of insurance premiums)" such duty is not directly indicated, although in accordance with subpar. 2, par. 1, taxpayers are required to register with the tax authorities, if such a duty is provided for by this Code.

Theoretically, to persons who did not fulfill

the duty to register, Art. 116 of the Tax Code of the Russian Federation "Violation of the procedure for registration with a tax authority" can be applied, but there are problems. In accordance with clause 1 of this article, the taxpayer violates the deadline for submitting an application for registration with the tax authority on the grounds provided for in this Code. The deadline for fulfilling the obligation to register in accordance with par. 7.3 of Art. 83 of the Tax Code is not established. In accordance with par. 2 of Art. 116 of the Tax Code the conduct of activities of an organization or an individual entrepreneur without registration with the tax authority on the grounds provided for in this Code is punishable. But in fact, the considered category of physical persons does not concern either individual businessmen, or to the organizations corresponding to which definitions are given in item 2 of Art. 11 of the Tax Code, therefore, a penalty for failure to fulfill this obligation to register self-employed persons in the Tax Code is not provided.

It is indisputable that for certain purposes registration with the tax authority is necessary. These goals are obvious from par. 70 of Art. 217 of the Tax Code, which states that income is not taxable (exempt from taxation) in the form of payments (fees) received by individuals who are not individual entrepreneurs, from individuals for providing them with the following services for personal, domestic and/or other similar needs:

- for the care and care of children, sick people, persons who have reached the age of 80 years, as well as other persons in need of constant external care for medical organizations;
- tutoring;
- cleaning of living quarters, housekeeping.

Therefore, the law of a subject of the Russian Federation can also establish other types of services for personal, domestic and/or other similar needs, income from which, in

accordance with this paragraph, are exempt from taxation. In particular, the provisions of this clause refer to individuals who notify the tax authority in accordance with clause 7.3 of Art. 82 of this Code and do not involve employees to provide services specified in this clause.

3 RESULT.

Thus, in accordance with the new regulations, an individual who carries out these types of activities must register and not pay personal income tax. At the same time, it should be noted that to date, there is no single law of the subject of the Russian Federation, in which other types of services for personal, domestic and/or other similar needs would have been established, income from whose provision is exempt from taxation in accordance with par.70 Art. 217 of the Tax Code. It is worth noting that other concepts of taxation for self-employed citizens are also proposed. According to Titov B., self-employed persons should be allowed to buy a work permit for a certain period of time. Upon termination of the permit, the registration is also terminated. The proposed amount of payment should be as much as 20 thousand rubles, from 10 to 20 thousand per year. At the same time, self-employed citizens do not pay other taxes, they do not pay social funds. They also do not keep accounts, are not subject to inspections.

Many authors doubt that lawmaking procedures for project No. 11078-7 will lead to the legalization of a large number of self-employed people. The head of the organization "Opora Rossii" Kalinin A. expressed bewilderment why the document was not discussed with the expert community: "The law does not provide for an exit from the shadow economy ... we do not believe that with the adoption of the bill The President's instruction will be executed". This makes it possible to

understand why, for example, the order of the Federal Tax Service of Russia "On the approval of the form and format of notification of an individual about the implementation (termination) of activities to provide services to an individual for personal, domestic and (or) other similar needs" at the end of 2017 continues to exist in the form of a project: the Federal Tax Service does not expect a large number of people wishing to file such a notification, monitoring the situation from January 1, 2017 in subordinate tax inspections. Proceeding from this, there is no need for prompt acceptance of this order. In addition, Federal Law No. 401 as of November 30, 2016 was officially published on November 30, 2016, and this draft Order of the Federal Tax Service of Russia was posted on the Internet only on December 28, 2016. Again, there is a lack of special interest of the Federal Tax Service of Russia in prompt acceptance of the order. Titov B. even during the passage of legislative procedures for the project No. 11078-7 noted, referring to the research of his staff, that the project will not withdraw the self-employed from the shadows. He believes that after the end of the two-year grace period, the usual rate of insurance fees will return: 23 thousand rubles per year plus personal income tax. At the same time, information about the persons who provided such services and attracted domestic workers, the tax and social funds will remain. Due to the fact that distrust of the state takes place among the population, the promised benefits may not work. In addition, Titov B. notes that the bill offers a very narrow list of activities: does not apply to artisans, those who provide small household services in the form of repair of shoes, clothing, etc. By the way, the rates (tariff) of modern insurance premiums for individual entrepreneurs are set in par. 2 of Art. 425, par. 1 of Art. 430 of the Tax Code. So, if the income does not exceed 300,000 rubles, in 2017 these payers must pay a fixed payment.

It is 27,990 thousand rubles. Thus, the Federal Law No. 401 regarding the allocation of a special category of “self-employed” persons and the regulation of the respective financial and legal consequences for them in a corresponding form in practice will definitely not affect the 16 million people potentially related to this category by opinion of the authorities. “The effect could be given only by a strict normative determination on the mandatory registration of these persons in the tax authorities and on the corresponding prohibition of such activities without such registration. However, this is not likely to happen in the pre-election period”. Possible costs of a tough approach will obviously exceed all additional tax revenues, especially since they are not planned until 2019.

However, it should be recognized that from January 1, 2017, the fiscal and financial part of the innovations concerning self-employed persons has been realized. Until June 2018, the Ministry of Justice will have to resolve the issue of formalizing the concept of “self-employed”, in which document to make appropriate changes: to the “On Employment”, “On State Registration of Legal Entities” Laws or the Civil Code. On the site of the ministry there was a closed discussion of the proposals: self-employed persons were offered to be referred to entrepreneurs who pay a single payment (patent) and who do not have the right to hire employees. Participants in the discussion also agreed that the status of the self-employed should be permanent, but with periodic confirmation. The question remains whether the changes should be made to the Civil Code. At the same time on January 27, 2017 the Chairman of the Committee for State Construction and Legislation Krashennikov P. and the Chairman of the Budget and Tax Committee Makarov A. introduced the bill No. 87981-7. This bill is supposed to be adjusted by the Civil Code of the Russian Federation. The content of this document is

stated very briefly:

1. In the par. 1 of Art. 2, after the words “... by law”, add the words “... unless otherwise provided by this Code”;

2. In par. 1 of Art. 23:

a) after the words “... of an individual entrepreneur”, add the words “... unless otherwise provided for by this paragraph”;

b) add the following paragraph: “With respect to certain types of entrepreneurial activity, the law may provide for the conditions for the exercise by citizens of such activities without state registration as an individual entrepreneur”.

It should be replaced that the bill does not specify the list of activities that are necessary. The explanatory note to Bill No. 87981-7 states that it was developed in compliance with the Decree of the State Duma of the Federal Assembly of the Russian Federation No. 254-7 of 16 November 2016 “On the Draft Federal Law No. 11078-7 “On Amendments to Part 1 and Part 2 of the Tax Code of the Russian Federation and certain legislative acts of the Russian Federation” with a view to determining the legal status of individuals providing on an individual basis for hire certain types of services to individuals without registration as individual entrepreneurs. It is assumed that in the implementation of certain types of income-generating activities, citizens can be exempted from the necessity of carrying out often burdensome duties established for individual entrepreneurs. The adoption of the federal law “On Amending Part 1 of the Civil Code of the Russian Federation” will reduce the level of informal employment of the economically active population and will become the legal basis for fulfilling the assignment of the President of the Russian Federation given at the meeting of the Presidential Council for Strategic Development and Priority Projects as of September 21, 2016, - “exclude any possibility of recognizing the activities of self-

employed citizens as illegal entrepreneurship”. But it seems that the listed problems cannot be solved correctly until there is an unambiguous definition of entrepreneurial activity in place of the definition in par. 1 of Art. 2 of the Civil Code of the Russian Federation.

In the opinion of Tyutin D.V., who analyzed the practice of the highest judicial bodies, the evaluation character of par. 1 of Art. 2 of the Civil Code of the Russian Federation, which defines entrepreneurial activity, cannot but give rise to interrelated problems in tax legal relations. The volume of these problems is not yet significant, including for the reason that attempts by tax authorities to tax certain activities as entrepreneurial, but carried out by individuals without proper registration, are episodic. But it is not possible to expect adequate regulatory resolution of the issue in the near future.

Due to the fact that the main volume of tax revenues in the consolidated budget is provided by a relatively small number of the largest taxpayers-organizations (usually as a result of their entrepreneurial activities), it is reasonable to assume that it is to them, and not to individuals without the status of an individual entrepreneur, will show an increased interest, which for today is expressed, among other things, in the presence of a substantial block of norms of the tax law regulating the peculiarities of taxation largest taxpayers, as well as in the establishment of specialized tax inspections for the largest taxpayers.

4 CONCLUSION

So, all the disputes about where to make the appropriate changes about the “self-employed” persons: “On Employment of the Population in the Russian Federation”, “On State Registration of Legal Entities and Individual Entrepreneurs” Laws or in the Civil Code of the Russian Federation it should be assumed, are simply “working off” oral orders

of the President of the Russian Federation. At least, this unambiguously follows from the explanatory note to the bill No. 87981-7. Ratio legis is the motive of the law, the basis of the law, the reason for the existence of the law in this case-as follows from the text of instructions and the said explanatory note-is not in any way an attempt to really tax a selected group of individuals, but rather to impress the state's special concern for them. There is no real need for such changes in the civil (labor and other) legislation, since the main task - the introduction of changes to the Civil Code of the Russian Federation - has already been implemented by the legislator, although the new tax norms are likely to be practically not applied. The decision of the same task on the correction of Russian civil legislation and the “saturation” of its norms on “self-employed” persons, it should be assumed, will affect to a lesser extent 16 million people, since it is difficult to assume that it will give them any significant rights, but will burdens their essential (and all the more strictly controlled) duties.

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